THE HON'BLE SRI JUSTICE V. ESWARAIAH

W.P.No. 18616 of 2004

Dated: 13-08-2007

Between:-

1. G. Sudhakar Reddy (died) per Lrs.
2. G. Lakshmi.
3. G. Sudheer Reddy

..Petitioners

And

The District Co-operative Central Bank,
Rep., by its Person-in-Charge Committee,
Warangal and another.

..Respondents.

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:O R D E R:

The first petitioner, who was working as Staff Assistant in the first respondent-Bank, questioned the order of the first respondent dated 30-09-2004 dismissing him from service. The first petitioner, during the pendency of the writ petition, died on 22-02-2007 and his wife and son were brought on record as the legal representatives of the first petitioner as petitioner Nos. 2 and 3 as per orders dated

24-07-2007 in W.P.M.P.No. 15984 of 2007.

It is the case of the petitioners that the deceased petitioner was appointed as Supervisor on 07-01-1977 by the then Land Mortgage Bank, Yeturunagaram, Mulugu

branch and he had worked at various other places as Staff Assistant, Cashier etc., While he was working as Cashier (Staff Assistant) at Dornakal Branch, he was placed under suspension on 08-11-2000 on the ground that he has committed certain irregularities. Thereafter, a memo was issued on 04-12-2000 framing four charges for which explanation

dated 23-01-2001 was submitted. The Assistant General Manager of the first respondent/bank was appointed as enquiry Officer on

10-04-2001 and after conducting enquiry, he submitted enquiry report. Pursuant to the enquiry report, the second respondent -- General Manager of the respondent-bank issued a show cause notice dated 15-09-2001 calling upon the explanation from the first petitioner as to why the proposed punishment of dismissal from service and to treat the suspension period as on leave without pay and to recover an amount of Rs.89,363-94 paise with interest @ 22%, shall not be imposed. As it is stated that the enquiry report was not furnished to the petitioner along with a show cause notice, the petitioner filed W.P.No. 21804 of 2001 on the file of this Court and that after filing the writ petition, the enquiry report was furnished and the petitioner was permitted to submit a detailed reply to the show cause notice dated 15-09-2001. It is stated that the petitioner field a detailed reply dated 07-05-2002 before the second respondent who is the disciplinary authority

and after filing the explanation, the first respondent-bank represented by Person-in-Charge Committee passed final orders dismissing the first petitioner from service.

The petitioner questions the said order of the first respondent on the ground that as per the Special Bye-laws governing the service conditions of the employees of District Co-operative Central Bank, Warangal, the President of the Bank is the appointing authority as well as the disciplinary authority in respect of all employees other than the Secretary, Asst., Secretary, Manager, Development Officer, Executive Officer and Asst., Executive Officer. It is stated that the first petitioner (deceased) was not an Officer in rank, but he comes under the category of 'all other employees' as stated in Bye-law No. 13 of the Special Bye-laws. It is stated that the Bye-laws were further amended by General Body of the first respondent-Bank vide resolution dated 30-12-1989 amending certain service Bye-laws; and as per the amended bye-laws, the General Manager is the authority having full disciplinary control over the employees coming under Category-III to VIII of Short Term and all employees of erstwhile Primary Agricultural Development Banks (LT) (for short 'PADBs'). It is stated that the first petitioner comes within the category of 'all employees' of elsewhere PADBs and therefore the disciplinary authority is only the 'General Manager'; but whereas in case of other employees above the rank of Sub-staff, it is the Board of

Managing Committee. Under the Bye-laws, Bye-law No. 13 (4) (c), the appellate authority against every order awarding the punishments in respect of 'all other employees' is the Executive Committee and in respect of the employees of the Officer cadre it is the Board of Management.

Thus, it is the case of the learned counsel for the petitioners that the order of dismissal of the first petitioner has been passed by the Executive Committee i.e., Person-in-Charge Committee which is the appellate authority and therefore the said order is unsustainable as the right of appeal available under the Bye-laws has been taken away. No doubt, an appeal against the order of the Executive Committee lies to the Board of Management. Against the order passed in respect of the punishment imposed against the Secretary, Assistant Secretary, Manager, Development Officer, Executive Officer and Assistant Executive Officer by the Executive Committee appeal lies to the Board of Management.

Learned counsel appearing for the petitioners submits that the punishment in respect of stoppage of increment imposed by the Executive Committee relating to the rank of Secretary, Assistant Secretary, Executive Officer etc., appeal lies to the Board of Management. It is stated that the dismissal of the first petitioner comes under the category of 'all other employees', but not in the rank of Secretary, Assistant Secretary, Manager, Development

Officer, Executive Officer, Asst., Executive Officer and therefore no appeal is provided against the dismissal order passed by the Executive Committee. It is stated that the appeal is provided against the order passed by the General Manager to the Executive Committee alone. Thus, it is the case of the learned counsel appearing for the petitioners that as the right of appeal has been taken away, the impugned order passed by the appellate authority is illegal and unsustainable.

In support of his contention, learned counsel relied upon the judgement of the Apex Court in ***SURJIT GHOSH v. CHAIRMAN & M.D., UNITED COMMERCIAL BANK***[1] in which the Apex Court held that when an appeal is provided to the higher authority concerned against the order of the disciplinary authority or of a lower authority and that the higher authority passes an order of punishment, the employee concerned is deprived of the remedy of appeal which is a substantive right given to him by the Rules/Regulations. An employee cannot be deprived of his substantive right. No doubt, the higher or appellate authority may choose to exercise the power of the disciplinary authority in some cases while not doing so in other cases. In such cases, the right of the employee depends upon the choice of the higher/appellate authority, which patently results in discrimination between an employee and employee. Surely such a situation cannot savour of legality. Similar contention of the respondent-

Bank that when an appellate authority chooses to exercise the power of disciplinary authority, it was held that if there is no right of appeal provided under the Regulations, such contention cannot be accepted.

A division Bench of this Court in ***V. Narayana vs. The District Co-operative Central Bank Ltd., rep., by its Person-in-Charge Committee, Hanamkonda, Warangal*** (W.A.No. 57 of 2005 dated
18-01-2005) set aside the show cause notice issued by the appellate authority on the ground that if the appellate authority passes the final order, it amounts depriving the remedy of the person who has got a right of appeal. Accordingly, the show cause notice issued was set aside giving liberty to the disciplinary authority to take appropriate action in accordance with the byelaws and Rules governing the issue and to pass appropriate orders basing on the enquiry officer's report.

Learned counsel appearing for the respondents Sri K. Nageshwara Sree submits that the Commissioner & Registrar of Co-operation issued orders in Rc.No. 34861/2003/Z/V16 dated
27-02-2004 appointing Committee of Persons under Section 32 (7) (a) of the Andhra Pradesh Co-operative Societies Act, 1964 to manage the affairs of the Warangal District Co-operative Central Bank Ltd., for a period of six months. While exercising the power under Section 32 (7) (a) of the Act, the Committee of Persons appointed are

entitled to exercise powers or any functions of the Committee as per the Bye-laws of the Society. Notwithstanding the provisions contained in the Byelaws, Persons Committee was also directed to adhere with all maters relating to sanction of loan, transfers, disciplinary matters of staff etc., shall only be decided by the Persons-in-Charge as a whole. It is stated that under the said order of the Commissioner, the Person-in-Charge Committee is empowered to take disciplinary action against the first petitioner since he is a Staff Assistant. I am of the opinion that whatever powers the Managing Committee was exercising, the same powers can only be exercised by the Persons-In-Charge Committee and subject to the control of the Registrar and other instructions or directions issued from time to time. The said direction issued by the Commissioner cannot vest on the Persons-In-Charge Committee to exercise the powers which are not entitled to be exercised by the Managing Committee. Therefore, I am unable to accept the contention of the learned counsel appearing for the respondents that under the guise of the said order of the Commissioner of Co-operation, the Persons-in-Charge Committee can also exercise the powers of the appellate authority. I am of the opinion that when the regular Managing Committee cannot exercise such powers, the question of exercising such power by the Persons-In-Charge committee does not arise.

In the instant case, admittedly the show cause notice was issued by the disciplinary authority, who is the second respondent, but whereas the final orders have been passed by the appellate authority/first respondent. Under the Byelaws no appeal is provided against the dismissal order of Staff Assistant to the Board of Management and therefore the impugned order of dismissal is illegal and unsustainable.

Accordingly, the impugned order is set aside keeping it open for the second respondent, the disciplinary authority, to pass final orders pursuant to the show cause notice, which was already issued by him.

The writ petition is accordingly disposed of. No costs.

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V. ESWARAIAH, J

Dated: 13-08-2007.
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1 . AIR 1995 SC 1053